THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION NO.24182 OF 2004

Dated 6th September 2005

Between:

G.Arun Kumar S/o.G.Manohar Rao,

Aged about 51 years, Occu: Business,

R/o.Ranisati Mandir Road, Adilabad,

Adilabad District.

…Petitioner

and

The Station House Officer, Sanjeevreddy Nagar P.S.,

S.R.Nagar, Hyderabad & 3 others.

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION NO.24182 OF 2004

ORDER:

The 4th respondent in the writ petition filed W.P.M.P.No.7324 of 2005, seeking modification of the interim order passed by this Court on 30-12-2004, with a view to enable him to withdraw the amount, which is the subject-matter of the writ petition. Learned counsel for the writ-petitioner, learned Standing Counsel for the respondents

2 and 3, and learned counsel for the 4th respondent, have made extensive submissions and agreed for the disposal of the writ petition itself.

The petitioner claims to have purchased the shares worth Rs.24,00,000/- from the 4th respondent, in the year 1996. He states that though he has been requesting

the 4th respondent to take back his shares and return the money invested by him, the latter was dodging the matter for the past several years. According to the petitioner, the 4th respondent received substantial amount by entering into agreement with certain investors, and that he issued two cheques bearing Nos.632194 and 632195, dated 11-12-2004, for a sum of Rs.14,12,250/- and Rs.21,65,890/-, respectively. He claims to have returned the share certificates on receiving the said amount. It is stated that the cheques were presented to the bankers of the petitioner i.e. the 3rd respondent, and that the cheques have since been cleared.

The grievance of the petitioner is that the 3rd respondent did not permit him to withdraw that amount, on the ground that the 2nd respondent issued certain instructions to withhold the payment. It is further alleged that having issued the cheques on 11-12-2004, the 4th respondent lodged a complaint with the 1st respondent on

18-12-2004, and F.I.R.No.1064 of 2004 was registered, on the basis of the same. The writ petition is filed for issuance of a *Writ of Mandamus,* declaring the action of the 1st respondent in registering F.I.R.No.1064 of 2004, and the action of the respondents 2 and 3 in withholding the amount of Rs.35,78,140/-, covered by the two cheques, as illegal, arbitrary and contrary to the provisions of the Negotiable Instruments Act and Banking Regulation Act. The petitioner prays for quashing of the F.I.R., and seeks a direction to the respondents 2 and 3 to pay the amount referred to above.

The 4th respondent filed a counter affidavit. It is stated that the two cheques, referred to above, were kept in the records of the Company, and that the petitioner had taken away the same,

with a *mala fide* intention. He contends that the factum of the petitioner presenting the cheques and drawing certain amount, was known to him only when he visited

his banker, Indian Overseas Bank, Raj Bhavan Road Branch; on 15-12-2004, and soon thereafter, he submitted a complaint before the 1st respondent and issued instructions to his banker, to stop payment. It was submitted that the cheques were forged, and that they were not issued by the 4th respondent, at all.

Sri B. Purushotham Reddy, learned counsel for the petitioner submits that the 4th respondent gave cheques, in lieu of the shares surrendered by the petitioner, and it was not at all open to him, either to submit a complaint, or instruct his bankers to stop payment. He contends that once the cheques were issued,
a presumption, as provided for under Section 118 of the Negotiable Instruments Act, needs to be drawn, and that it was not competent for respondents 2 and 3 to stop the payment, particularly, after the cheques were cleared. Learned counsel further submits that the F.I.R., registered against the petitioner cannot be sustained in law and the same deserves to be quashed. He also contends that once the amount reached the 2nd respondent, there is no provision in law, which empowers it to withhold the payment.

Sri S. Ravi, learned counsel appearing for Sri E.Phani Kumar, learned counsel for the 4th respondent, submits that the question of Managing Director paying any amount, in lieu of shares, does not arise. According to him, if the petitioner wanted to transfer or surrender his shares, he was required to follow the procedure prescribed under the Companies Act, and that it is impermissible in law, for the Managing Director, to re-purchase or take surrender of the shares. Learned counsel further contends that the petitioner had stolen some blank cheques signed by the 4th respondent from the office of the latter, and as soon as the said factum was known, necessary steps were taken, to prevent the withdrawal of the amount. Learned counsel points out that, apart from submitting a complaint before the 1st respondent, the 4th respondent has filed O.S.No.7877 of 2004 in the Court of IV

Junior Civil Judge, City Civil Court, Hyderabad, for the relief of perpetual injunction, restraining respondents 2 and 3 herein, from releasing the amount covered by the cheques, in favour of the writ-petitioner. He submits that the writ petition is not maintainable.

Sri Ch. Siva Reddy, learned Standing Counsel for the respondents 2 and 3, submits that though the cheques presented by the petitioner were cleared, the amount could not be paid, on account of the information received from M/s Indian Overseas Bank. He submits that withholding of the amount by respondents 2 and 3, is not on account of their claim against the writ-petitioner, but due to the instructions received from the Bank, which cleared the cheques.

Petitioner presented to his banker, the 2nd respondent, two cheques, referred to above, dated 11-12-2004, said to have been issued by the 4th respondent, for a sum of Rs.35,78,140/-. The record discloses that the cheques were cleared by the banker of the 4th respondent i.e. Indian Overseas Bank, Raj Bhavan Road Branch, Hyderabad. The 4th respondent claims to have known about the drawal of the amount only on 15-12-2004, and he states that he submitted a complaint, soon after, to his banker as well as the 1st respondent. The complaint submitted by him, however, bears the date of 14-12-2004. The circumstances under which, either he issued the cheques to the petitioner, or he parted with the blank cheques, as alleged by him, cannot constitute the subject-matter of adjudication in this writ petition. The reason is that, as of now, a complaint, before the 1st respondent, and a civil suit, in the Court of IV Junior Civil Judge, City Civil Court, Hyderabad, filed by the 4th respondent; are pending. Any finding by this Court on the legality or otherwise of the transactions between the parties is likely to have its impact on the pending proceedings.

Learned counsel for the writ-petitioner made an endeavour to convince this

Court that the scope of the civil suit is very limited, and that the 4th respondent did not seek any declaration, as to his obligation, or the lack of it, under the cheques, and in that view of the matter, the respondents 2 and 3 cannot withhold the amount. However, once the subject-matter is pending before a civil Court, though, for a relief of perpetual injunction, it is not at all advisable for this Court to permit either the writ-petitioner, or the 2nd respondent to withdraw the amount, as a whole.

In the counter affidavit filed on behalf of the 4th respondent, it is admitted that the petitioner purchased shares of their Company. While according to the petitioner, the worth of the shares was Rs.24,00,000/-, according to the 4th respondent, it was Rs.19,00,000/-. Across the Bar, it was stated that, even during the winding up of the proceedings, the face value of the shares cannot be paid to certain selected shareholders, and the distribution must be equal. Once it had emerged that the petitioner invested a sum of Rs.19,00,000/- or Rs.24,00,000/-, as the case may be, the 4th respondent cannot be permitted to plead that the petitioner is not entitled for any amount, whatever. This Court is of the view that the interests of both the parties can be protected, by permitting the writ-petitioner to withdraw a portion of the amount, which is now with the 2nd respondent, and directing the rest to be kept in a fixed deposit, till the disposal of the suit. The further steps in pursuance of the F.I.R. can be required to be deferred, till the suit is disposed of.

For the foregoing reasons, the writ petition is disposed of, directing that,

a. the learned IV Junior Civil Judge, City Civil Court, Hyderabad, shall dispose of O.S.No.7877 of 2004, pending before him, within a period of three months from the date of receipt of a copy of this order.

b. Out of the amount of Rs.35,78,140/-, which is now with the 2nd respondent, the petitioner shall be entitled to withdraw a sum of Rs.7,00,000/- (Seven lakhs only), without furnishing any

security, subject, however, to the outcome of the suit. The balance shall be kept in an interest-yielding account, if not already done.

c. The further proceedings in F.I.R.No.1064 of 2004, before the 1st respondent, shall be deferred till the disposal of suit - O.S.No.7877 of 2004.

d. The information as to disposal of the suit can be furnished by the writ-petitioner, or the 4th respondent, to the 1st respondent. If the suit is decreed, the investigation into the matter may be proceeded with, and if it is dismissed, the F.I.R. shall stand quashed.

e. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt. 06 –09-2005

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